



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 12 2020

The Honorable William Harris
Chief, Catawba Indian Nation
996 Avenue of the Nations
Rock Hill, South Carolina 29730

Dear Chief Harris:

On September 17, 2018, the Catawba Indian Nation (Nation)¹ submitted to the Bureau of Indian Affairs (BIA) an application to transfer into trust approximately 16.57 acres of land known as the Kings Mountain Site (Site) in Cleveland County, North Carolina, for gaming and other purposes.² The Nation also requested a determination whether the Site is eligible for gaming. The Nation proposes to construct a casino and mixed-use entertainment complex.

Decision

We have completed our review of the Nation's request and the documentation in the record. As discussed below, it is my determination that the Department of the Interior (Department) will accept transfer of the King Mountain Site into trust for the benefit of the Nation. Once acquired in trust, the Nation may conduct gaming on the Site.

Prior Proceedings

In 1993, after more than a century of asserting aboriginal land claims against the State of South Carolina (State),³ the Nation and State negotiated a Settlement Agreement⁴ resolving existing claims. On October 27, 1993, Congress enacted the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 (Settlement Act),⁵ incorporating the terms of the Settlement Agreement. Among other things, the Settlement Act restored the federal trust relationship between the Nation and the United States.⁶ The Settlement Agreement and Settlement Act contain various provisions pertaining to the trust acquisition of land by the Secretary of the

¹ Until 2020, the Catawba Indian Nation was known as the Catawba Tribe of South Carolina. *See* 85 Fed. Reg. 5,642 (January 30, 2020).

² Letter to Bruce Maytubby, Regional Director, Eastern Regional Office, from Gregory A. Smith, Hobbs Straus Dean & Walker (Sept. 17, 2018) (hereinafter Nation's Application).

³ *See, e.g., South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498 (1986); *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 865 F.2d 1444 (4th Cir. 1989); *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 978 F.2d 1334 (4th Cir. 1992); *Catawba Indian Tribe of South Carolina v. United States*, 24 Cl. Ct. 24 (1991).

⁴ Agreement in Principle, Agreement between the Catawba Indian Tribe of South Carolina and the State of South Carolina (provided as an attachment to the state settlement act, S.C. CODE ANN. § 27-16-10 *et seq.*

⁵ Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Pub. L. No. 103-116, formerly codified at 25 U.S.C. § 941 *et seq.* (omitted from the editorial reclassification of Title 25).

⁶ Settlement Act at § 4 (Restoration of Federal Trust Relationship).

Interior (Secretary), use of such land for gaming, and the applicability of the Indian Gaming Regulatory Act (IGRA).⁷

In 2013, the Nation submitted an application (Mandatory Application) to the BIA requesting that the Department transfer the Site into trust under the Settlement Act's mandatory acquisition provisions.⁸ On March 23, 2018, the Deputy Secretary of the Interior (Deputy Secretary) issued a memorandum clarifying that the mandatory trust authority of the Settlement Act did not extend to the Site because it was located outside South Carolina.⁹ The Deputy Secretary concluded that the mandatory acquisition provisions negotiated between South Carolina and the Nation could not be applied to a sovereign state that was not a party to the Settlement Agreement.¹⁰

On April 4, 2018, following the Deputy Secretary's memorandum, the Nation withdrew its Mandatory Application.¹¹ On September 17, 2018, the Nation submitted its Discretionary Application pursuant to the Department's land acquisition regulations at 25 C.F.R. Part 151.

Description of the Project

The Site is located approximately 33 miles west of Charlotte, North Carolina, and 34 miles northwest of Rock Hill, South Carolina, the location of the Nation's headquarters.¹² The Site is also located approximately 33 miles from the Nation's existing Reservation and 19 miles from its Historic Reservation.¹³ The Site is within the Nation's congressionally established Service Area.¹⁴ The Nation entered into a Purchase Agreement for the Site on September 14, 2018.¹⁵

The Nation proposes to construct a casino and mixed-use entertainment complex totaling approximately 195,000 square feet (sf).¹⁶ The gaming area will consist of 75,128 sf with approximately 1,796 electronic gaming machines and 54 table games. The facility will also include a 940-seat restaurant, a small retail space for the sale of Native artwork and crafts, and 2,130 parking spaces to accommodate both patrons and employees.¹⁷

The legal description of the Site is enclosed.

⁷ See, e.g., Settlement Act at § 12 (Establishment of Expanded Reservation); § 13 (Non-Reservation Properties); § 14 (Games of Chance).

⁸ Application of the Catawba Indian Nation to Acquire 16.57 Acres +/- in Kings Mountain, North Carolina Pursuant to 25 U.S.C. § 941j (Aug. 30, 2013).

⁹ Memorandum to Secretary, Mandatory Trust Authority Under the Catawba Settlement Act, from Deputy Secretary (Mar. 23, 2018) (Deputy Secretary's Memorandum).

¹⁰ Deputy Secretary's Memorandum at 2.

¹¹ Letter, Chief William Harris to Deputy Secretary Bernhardt (Apr. 2, 2018).

¹² Environmental Assessment, Catawba Indian nation Trust Acquisition and Multi-Use Entertainment Complex (hereinafter EA) at § 2.2.

¹³ See Memorandum from the Acting Regional Director, Eastern Region, to the Assistant Secretary – Indian Affairs (March 10, 2020) (hereinafter Acting Regional Director's Findings of Fact) at 1.

¹⁴ Nation's Application at 7.

¹⁵ *Id.* at 28.

¹⁶ EA § 2.3.2.

¹⁷ Nation's Application at 17.

Eligibility for Gaming Pursuant to the Indian Gaming Regulatory Act

Congress enacted the Indian Gaming Regulatory Act, to in part, provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development and self-sufficiency.¹⁸ Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988. Congress expressly provided several exceptions to the general prohibition. One such exception exists for lands taken into trust as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition” (Restored Lands Exception).¹⁹

As discussed below, the Nation meets the requirements of Section 20 and 25 C.F.R. Part 292, the Department’s regulations implementing Section 20. Specifically, the Nation meets the requirements of Sections 292.7-12, and, therefore, meets the requirements of the Restored Lands Exception.

Background

In 1993, after more than a century of asserting aboriginal land claims against the State, the Nation and State negotiated an agreement²⁰ resolving existing claims. On October 27, 1993, Congress enacted the Settlement Act²¹ that incorporated the terms of the prior agreement and restored the federal trust relationship between the Nation and the United States.²² The Settlement Act contains various provisions pertaining to the trust acquisition of land by the Secretary, use of such lands for gaming, and the applicability of IGRA.²³

Analysis - Restored Tribe

Upon review of the record, we find that the Nation meets the criteria of Section 292.7(a)-(c) and Sections 292.8-10, and, thus, is a “restored tribe.”

Section 292.7 – The requirements for the Restored Lands Exception

Part 292 provides that the Restored Lands Exception applies “only when all of the following conditions in this section are met”:

- (a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;

¹⁸ See 25 U.S.C. § 2702(2).

¹⁹ 25 U.S.C. § 2719 (b)(1)(B)(iii).

²⁰ Agreement in Principle, Agreement between the Catawba Indian Tribe of South Carolina and the State of South Carolina (provided as an attachment to the state settlement act, S.C. CODE ANN. § 27-16-10 *et seq.*

²¹ Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Pub. L. No. 103–116, formerly codified at 25 U.S.C. § 941 *et seq.* (omitted from the editorial reclassification of Title 25).

²² Settlement Act at § 4 (Restoration of Federal Trust Relationship).

²³ See, e.g., Settlement Act at § 12 (Establishment of Expanded Reservation); § 13 (Non-Reservation Properties); § 14 (Games of Chance).

- (b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;
- (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and
- (d) The newly acquired lands meet the criteria of “restored lands” in § 292.11.²⁴

We address each requirement in turn.

Section 292.8 – The Nation at one time was federally recognized

Section 292.8 provides four specific ways, and one catch-all provision, by which a tribe may demonstrate that at one time it was federally recognized:

- (a) The United States at one time entered into treaty negotiations with the tribe;
- (b) The Department determined that the tribe could organize under the Indian Reorganization Act or the Oklahoma Indian Welfare Act;
- (c) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;
- (d) The United States at one time acquired land for the tribe’s benefit; or
- (e) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.

The Nation meets three of the requirements of Section 292.8: (b), (c) and (d). In March and April of 1944, the Solicitor of the Interior Department determined that the Nation could organize under the Indian Reorganization Act (IRA).²⁵ The Department officially approved the Catawba IRA Constitution on June 30, 1944.²⁶ The Department documented the Nation’s organization under the IRA in the 1947 Haas Report.²⁷ The Haas Report describes that the Secretary approved the Catawba Constitution and By-Laws pursuant to the IRA, and that the “Act applies [to the Nation] since [the] Indians did not vote against its application.”²⁸ Accordingly, the Nation satisfies Section 292.8(b), establishing that it was federally recognized at one time.²⁹

Section 292.9 – The Nation was subject to legislative termination and, therefore, lost its government-to-government relationship with the United States

²⁴ *Id.* at § 292.7.

²⁵ Fowler Harper, Interior Solicitor Memorandum, “Catawba Tribe–Recognition Under IRA” (March 20, 1944); Fowler Harper, Interior Solicitor Memorandum, “Questions of the Catawbas’ Identity and Organization as a Tribe and Right to Adopt IRA Constitution” (April 11, 1944).

²⁶ Constitution and By-Laws of the Catawba Indian Tribe of South Carolina (June 30, 1944).

²⁷ Theodore Haas, *Ten Years of Tribal Government Under I.R.A.*, United States Indian Service (January 1947).

²⁸ *Id.* at 19.

²⁹ The Nation also meets the criteria in both §§ 292.8(c) and (d). In 1848, 1854, and 1941, Congress enacted appropriations legislation specific to the Nation, which are clear evidence that a government-to-government relationship existed between the United States and the Nation. Furthermore, on December 14, 1943, the United States acquired 3,434 acres in trust for the Nation’s benefit. The appropriations enactments and the land acquisition satisfy the requirements of Sections 292.8(c) and (d) and provide indisputable evidence that the Nation was at one time federally recognized prior to termination.

To show that a tribe lost its government-to-government relationship, a tribe must meet one of the following requirements under Section 292.9:

- (a) Legislative termination;
- (b) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; or
- (c) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.

In 1959, Congress enacted An Act to Provide for the Division of the Tribal Assets of the Catawba Indian Tribe of South Carolina Among the Members of the Tribe, and for Other Purposes, terminating the United States' government-to-government relationship with the Nation.³⁰ The Nation, thus, satisfies Section 292.9(a), demonstrating that it lost its government-to-government relationship.

25 C.F.R. § 292.10 – The Nation was restored to federal recognition pursuant to congressional restoration legislation

To demonstrate that a tribe was restored to federal recognition sometime after it lost its government-to-government relationship, a tribe must meet one of the following requirements in Section 292.10:

- (a) Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe (required for tribes terminated by Congressional action);
- (b) Recognition through the administrative Federal Acknowledgment Process under § 83.8 of this chapter; or
- (c) A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.

In 1993, Congress restored the Nation's federal recognition through enactment of the Settlement Act, and, thus, the Nation meets the requirements of Section 292.10(a). Section 2(b) of the Settlement Act expressly states that one of the Act's intended purposes is "*to restore* the trust relationship between the Tribe and the United States (emphasis added)."³¹

For the reasons stated, the Nation meets the regulatory requirements Sections 292.8–10 and, therefore, qualifies as a "restored tribe" under IGRA.³²

³⁰ See An Act to Provide for the Division of the Tribal Assets of the Catawba Indian Tribe of South Carolina Among the Members of the Tribe, and for Other Purposes, Pub. L. No. 86-322, 73 Stat. 592 (Sept. 21, 1959).

³¹ Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Pub. L. No. 103-116.

³² 25 U.S.C. § 2719(b)(1)(B)(iii).

25 C.F.R. § 292.11 – The Kings Mountain Site is “restored lands”

The Site is located approximately 33 miles from the Nation’s existing Reservation and 19 miles from its Historic Reservation (established pursuant to the Treaty of Augusta), immediately off Interstate 85 in Township 4, just outside the city limits of Kings Mountain, Cleveland County, North Carolina.³³

Section 292.11 provides, in relevant part:

- (a) If the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, the tribe must show that either:
 - (1) The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or
 - (2) If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements of § 292.12.³⁴

The Settlement Act does not include language that either requires or authorizes the Secretary to take land into trust for the Nation within a specific geographic boundary;³⁵ therefore, the Nation must also meet the requirements of Section 292.12.

Section 292.12 provides that to establish a connection to the newly acquired lands for purposes of the “restored lands” exception, the tribe must meet the following:

- (a) The newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe’s governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:
 - (1) The land is within reasonable commuting distance of the tribe’s existing reservation;

³³ Memorandum, Analysis Of The Applicability Of The Restored Lands Exception Under The IGRA To The Catawba Indian Nation, Submitted on Behalf of the Catawba Indian Nation by Gregory A. Smith, of Hobbs, Straus, Dean & Walker, LLP (September 12, 2019) at 7 (hereinafter *Catawba Restored Lands Exception Memorandum*); *See* Attachment D, Map Showing Location of Site in Relation to Nation’s Existing Reservation; Attachment F, Map Showing Location of Site in Cleveland County, North Carolina; and Attachment G, Site Survey.

³⁴ Section 292.11 also provides pathways to analyze restored lands for tribes restored through the Federal Acknowledgment process under § 83.8 or by a Federal court determination. But those paths are not relevant here.

³⁵ In its Memorandum, the Nation argues that section 4(b) of the Settlement Act accords special significance to the Nation’s service area and when read in a manner most favorable to the Nation, authorizes the Secretary to take land into trust in North Carolina. But the regulation at § 292.11(a)(1) reads, “[t]he legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe *within a specific geographic area* (emphasis added). We conclude that the Settlement Act does not expressly authorize the Secretary to take land into trust within a specific geographic area in North Carolina. *Catawba Restored Lands Exception Memorandum* at 18.

- (2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
 - (3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or
 - (4) Other factors demonstrate the tribe's current connection to the land.
- (b) The tribe must demonstrate a significant historical connection to the land.
 - (c) The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the tribe must be able to show that either:
 - (1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
 - (2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

25 C.F.R. § 292.12(a) – The Nation demonstrates modern connections to the Site

To meet the requirements of Section 292.12(a) the Site must be located in a state where the tribe has both a governmental presence and a tribal population. As discussed below, the Site meets these two requirements.

The Nation provided the Department with a tribal roll that confirms a tribal population of 253 in North Carolina.³⁶ In the Settlement Act, Congress recognized that the Nation has a tribal population in North Carolina, and in the definition section of the Settlement Act, identified six North Carolina counties as service areas for the Nation, including Cleveland County where the Site is located.³⁷

In order to advance the general welfare of its enrolled members in North Carolina, the Nation operates many governmental programs and provides various services in North Carolina, including but not limited to:

- First time home buyer's assistance
- Childcare assistance
- Crime Victims Assistance services
- Substance abuse services
- Indian Child Welfare Act (ICWA) notifications

³⁶ Catawba Indian Nation Tribal Citizens living in N.C. (Nov. 27, 2019).

³⁷ "The term 'service area' means the area composed of the State of South Carolina and Cabarrus, Cleveland, Gaston, Mecklenburg, Rutherford, and Union counties in the State of North Carolina." Settlement Act, 25 U.S.C. § 941a(3)(9) (omitted), Pub. L. No. 103-116, §3, Oct. 27, 1993, 107 Stat. 1120.

- ICWA case assistance provided through the Family Services Department, including appearing in North Carolina state court proceedings on behalf of Tribal Members³⁸
- Other Family Services Transit services to access Family Services or the Indian Health Service clinic³⁹
- College scholarship programs
- Job placement services
- Processing Tribal Historic Preservation requests⁴⁰
- Working with North Carolina state and local governments on this and other projects

By providing these programs and services, the Nation has established a governmental presence in the lives of its enrolled members living in North Carolina, in accordance with Section 292.12(a).

The Nation has demonstrated, therefore, that there is both a tribal population and governmental presence in North Carolina where the Site is located. Next, the Nation must demonstrate one or more of the modern connections listed above in Section § 292.12(a)(1)-(4).

First, the Nation demonstrates that the Site meets the requirement of Section 292.12(a)(1) because the Site is within reasonable commuting distance of the Nation's existing reservation. The Site is located at the intersection of Interstate 85 and Kings Mountain Boulevard in Cleveland County, approximately 33-miles from the Nation's existing 1,020-acre reservation in the vicinity of Rock Hill, South Carolina. The Site is approximately a 35 to 40-minute drive from the Nation's governmental headquarters⁴¹ via Interstate 85, which provides easy access to Highway 74, Highway 321 and Interstate 485. Typical modes of transportation include personal vehicles and public transportation. The geographic accessibility of the Site, the quality of the roads, customarily available transportation, and the usual travel time all support a conclusion that the Site is conveniently located near the Nation's existing reservation for commuting purposes, and satisfies the "modern connections" requirement in Section 292.12(a)(1).

The Nation's modern connections to the Site are also evidenced by numerous events, museum exhibitions, and educational activities participated by enrolled tribal members.⁴²

³⁸ See email from Natalie McPherson of Carroll Law Offices to Gregory Smith of Hobbs Straus (Nov. 27, 2019). The email provides attached documentation of ICWA matters involving North Carolina tribal members. The email and documents establish both tribal population in North Carolina and governmental presence through the work of the Nation's Family Services Department.

³⁹ On average, 11% of the total visitors to the IHS Catawba Service Unit come from North Carolina, 5% of which are enrolled Catawba Tribal Members that are living in North Carolina. Nation's Submission Memorandum at 13 note 43.

⁴⁰ As undertaken by a Tribal Historic Preservation Officer exercising responsibilities provided for in federal law.

⁴¹ Catawba Restored Lands Exception Memorandum at 14.

⁴² Catawba Restored Lands Exception Memorandum at 14:

The Nation maintains a strong cultural presence throughout its service area and North Carolina. The Nation, for example, works with museums in North Carolina to recognize Catawba history in that state. The Schiele Museum of Natural History in Gastonia, North Carolina, for instance, has a permanent exhibit on the

25 C.F.R. § 292.12(b) – The Nation demonstrates a significant historical connection to the Site

Part 292 defines “significant historical connection” as:

Significant historical connection means the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.⁴³

The evidence of Catawba villages, occupancy, and subsistence use in the vicinity of the Site demonstrates a “significant historical connection” pursuant to Section 292.12(b). The Nation’s ancestors continuously used and occupied the lands within the vicinity of the Site.⁴⁴ The network of ancestral villages formed the core of the historic Catawba Indian Nation, and the traditionally occupied area is within the boundaries of the Site.^{45,46} The Catawba people occupied the land, engaged in subsistence activities, such as hunting and fishing, and gathered clay, among other daily life activities.⁴⁷

Additionally, the North Carolina Office of State Archaeology, which provides professional archaeological services to identify inventory and preserve Native American villages,⁴⁸ has documented at least 13 archaeological sites with Mississippian Indian cultural components in the adjacent Cleveland and Gaston Counties in North Carolina. The Mississippian sites are located

Catawba and hosts an annual celebration of Catawba culture with drummers and dancers from the Nation. The Catawbas’ ancestral connection to the land was ceremonially recognized as part of the Charlotte Pride Festival and Parade. Representatives of the Nation are also regularly invited to speak at local academic and community events, such as Belmont Abbey College and Warren Wilson College, and Catawba College in Salisbury, North Carolina, which is the home of the “Catawba Indians” and which provides an annual scholarship for a Tribal Member to attend the school. Additionally, the Nation is working with North Carolina chapters of the Daughters of the American Revolution and Sons of the American Revolution on a monument to Catawba warriors who fought in the Battle of King’s Mountain. The City of Kings Mountain itself has hosted events commemorating Catawba contributions during the Revolutionary War, with full participation by the Nation.

⁴³ 25 C.F.R. § 292.2.

⁴⁴ Catawba Restored Lands Exception Memorandum at 17.

⁴⁵ Catawba Restored Lands Exception Memorandum at 17.

⁴⁶ In its Memorandum, the Nation highlights additionally that the Site may be located within the boundaries of the Nation’s last reservation in North Carolina under the 1760 Treaty of Pine Hill. While the original treaty has been lost to history, the Department has held in past restored lands determinations that a “parcel’s proximity to a tribe’s historic reservation or Rancheria is evidence that the tribe has a significant historical connection to that parcel.” (See Dept. of Interior, Record of Decision, Trust Acquisition of 35.92 +/- Acres in the City of Elk Grove, California, for the Wilton Rancheria at 67 (Jan. 2017) (noting that the land at issue was within six miles of a tribe’s historic Rancheria). A parcel for the Mechoopda Indian Tribe of the Chico Rancheria, for example, was found to satisfy Section 292.12(b), in part, because the land was located only ten miles from its former Rancheria. (See Letter from Kevin Washburn, Assistant Sec’y – Indian Affairs, to Dennis Martinez, Chairman of the Mechoopda Indian Tribe of Chico Rancheria at 25 (Jan. 24, 2014). Here, the Site is located within Catawba ancestral lands and is likely within the Nation’s last reservation in North Carolina. This is further evidence of a significant historical connection to the land. Catawba Restored Lands Exception Memorandum at 18.

⁴⁷ Catawba Restored Lands Exception Memorandum at 16.

⁴⁸ *Id.*

within the Nation's ancestral lands in the Piedmont plateau.⁴⁹ The Catawbas are the only remaining federally recognized Indian tribe in North Carolina of Mississippian origin.⁵⁰

Though the Site falls within an area where another tribe may assert aboriginal ties, that fact does not detract from the Nation's ties to the land. As the National Indian Gaming Commission explained, "IGRA's restored lands exception does not require the [tribe] to demonstrate that it was the only tribe with historical connections to the area, or that the subject area was the only place where the [tribe] has historical connections."⁵¹

The evidence of historical connections in this case is similar to those supporting a finding of restored lands in the *Grand Traverse Band* decision.⁵² In *Grand Traverse Band*, the district court found that the proposed gaming site was located "at the heart of the region that comprised the core of the Band's aboriginal territory and was historically important to the economy and culture of the Band."⁵³ The court added that the Band had "occupied the region continuously from at least 100 years before treaty times until the present."⁵⁴ Like *Grand Traverse Band*, the Site is within the Nation's ancestral lands,⁵⁵ the Nation's ancestors have continuously occupied the region, and the region was historically important to the Nation's economy and culture.⁵⁶ The Nation has, therefore, demonstrated that it has a significant historical connection to the Site and satisfies the requirements of Section 292.12(b).

25 C.F.R. § 292.12(c) - The Nation submitted its Discretionary Application within 25-years after the Nation was restored to federal recognition

⁴⁹ *Id.*

⁵⁰ "Mississippian" is a geographical, temporal, and cultural term that refers to late prehistoric indigenous cultures in the Southeastern United States. See David G. Moore, CATAWBA VALLEY MISSISSIPPIAN: CERAMICS, CHRONOLOGY, AND CATAWBA INDIANS at 8 (2002); see also Anton Treur, ATLAS OF INDIAN NATIONS at 61-65 (2014) (noting that the "Cherokee are from the Iroquian language family and likely migrated to the Southeast from the eastern Great Lakes a few centuries before European contact")

⁵¹ Letter to Shawn Davis, Chairman of the Scotts Valley Band of Pomo Indians, from John Tahsuda, Assistant Sec'y – Indian Affairs (Feb. 7, 2019) at 15 (quoting the Memorandum from John Hay, Senior Attorney, to Tracie Stevens, Chairwoman, National Indian Gaming Commission at 12 (April 3, 2012)).

⁵² *Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Att'y for the W. Dist. of Mich.*, 198 F. Supp. 2d 920 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004).

⁵³ *Grand Traverse I*, 198 F. Supp. 2d at 925.

⁵⁴ *Id.*

⁵⁵ Catawba Restored Lands Exception Memorandum at 17 citing Attachments B.i., Maps of Aboriginal Area of the Catawba Indian Nation: Catawba Ancestral Lands in North Carolina; and B.iv. Maps of Aboriginal Area of the Catawba Indian Nation: Historical Cultural and Linguistic Map.

⁵⁶ Catawba Restored Lands Exception Memorandum at 16.

Catawba ancestral villages are located throughout the Piedmont area of the Carolinas, most notably along the Catawba River and in the Waxhaws, sacred Catawba territory that formed the historic core of the Nation. The Catawba Trail that connected the Nation to hunting and gathering grounds, trade routes, and other tribal communities also runs through Catawba ancestral lands in North and South Carolina. The Trail is located approximately 18.5 miles from the Parcel and 22 miles from the existing Reservation. The Catawba hunted, gathered, and engaged in other subsistence and ceremonial activities along the Trail, Catawba River, and within the surrounding region of the Historic Reservation, an area that is today coextensive with the Nation's North Carolina service area. Records from the colonial era show that the Catawba vigorously opposed non-Indian encroachment on their ancestral lands.

Last, the Nation must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration.⁵⁷ To demonstrate this connection, the Nation must be able to show that they submitted an application to take the land into trust within 25 years after the tribe was restored to federal recognition and the tribe is not gaming on other lands.⁵⁸

Congress restored the Nation's federal recognition in October 1993. The Nation submitted its application to acquire the Site in trust in September 2018, or 24 years and 11 months after the Nation's restoration. The Nation is not gaming on other lands. The Nation, therefore, meets the requirements of Section 292.12(c) and can demonstrate a temporal connection.

Conclusion

The Catawba Nation has demonstrated that it meets the requirements set forth in Part 292. The Site is, therefore, eligible for gaming under the Restored Lands exception of IGRA.

Trust Acquisition Determination Pursuant to 25 C.F.R. Part 151.

The Secretary's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act.⁵⁹ The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5.

25 C.F.R. § 151.3 – Land acquisition policy

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

- (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

Transfer of the Site into trust will facilitate tribal self-determination and economic development, thus, satisfying the criteria of Section 151.3(a)(3).⁶⁰

The Nation needs additional land to facilitate tribal self-determination and economic development for its 2,800 members, including 253 members in North Carolina.⁶¹ The Nation reports that its existing land base and tribal ventures are unable to meet the needs of the Nation.

⁵⁷ 25 C.F.R. § 292.12(c).

⁵⁸ 25 C.F.R. § 292.12(c)(2).

⁵⁹ 25 U.S.C. § 5108.

⁶⁰ Although only one factor in Section 151.3(a) must be met, the Nation's application also satisfies the criteria of subsection (a)(2) because the Nation entered into a Purchase Agreement for the Site on September 14, 2018. *See* Nation's Application, Attachment S.

⁶¹ Acting Regional Director's Findings of Fact at 4.

The Nation has attempted to establish business ventures to produce revenue, but none have produced substantial or stable sources of revenue.⁶² The Nation reports that the majority of its programs are dependent on federal funding, which creates uncertainty because that funding is not guaranteed every year.

A lack of consistent funding forced the Nation to cut programs for its members. For example, the Nation cut its after-school program for tribal youth offered at the Catawba Cultural Center after funding for the activities was not renewed under the Community Development Block Grant program. The Nation also had to lay off a Victim Resource Coordinator who provided critical trauma and support services to victims of crime in the community after the loss of an Office on Violence Against Women grant.⁶³ Further, under the Settlement Act, the Nation is required to pay an out-of-county fee for tribal students attending public schools within the local Rock Hill School District. The Nation reports that this fee was calculated at \$500,000 annually, which the Nation was unable to pay. The school district brought legal action against the Nation, and the suit was settled with the Nation transferring significant portions of its fee land to the school district.⁶⁴

The Nation experiences high unemployment rates. According to the U.S. Census Bureau, the Catawba Indian Reservation has an unemployment rate of 13.8 percent, and a median household income of \$33,029.⁶⁵ South Carolina and North Carolina have average unemployment rates of 4.3 percent and 4.2 percent, respectively, and median incomes of \$46,898 and \$48,256.⁶⁶ The Nation needs resources to provide on-site job training and professional development workshops for its members to gain the skills necessary for the workplace.

The Nation is in the process of developing a Tribal Justice Department that will include tribal court, Healing to Wellness alternative drug court, tribal law enforcement, and related justice services. The Nation reports, however, that it lacks revenue to establish these services and is ineligible to apply for Department of Justice grants.⁶⁷ In addition, the Nation needs additional funding to maintain its 33 miles of roads included on the BIA Roads Inventory. The Nation reports that maintaining these roads costs \$215,000 annually, but it receives only \$25,000 in federal assistance from the BIA each year.⁶⁸ The \$190,000 difference is taken from the Nation's Department of Transportation Tribal Transportation Roads Program allocation, which in turn

⁶² Nation's Application at 16.

⁶³ *Id.*

⁶⁴ *Id.* at 15 - 16.

⁶⁵ "My Tribal Area: Catawba Reservation, "United States Census Bureau, 2012–2016 American Community Survey 5-year Estimates", *available at* <https://www.census.gov/tribal/?st=45&aianihh=0525>.

⁶⁶ See South Carolina Department of Employment and Workforce, "South Carolina Unemployment Averages 4.3 percent in 2017" (Feb. 27, 2018), *available at* <https://dew.sc.gov/news-details-page/2018/02/27/south-carolina-unemployment-rate-averages-4.3-in-2017>; United States Census Bureau, "Quick Facts: South Carolina" (2012–2016), *available at* <https://www.census.gov/quickfacts/fact/table/sc/PST045217>; North Carolina Department of Commerce, "North Carolina's June Employment Figures Released" (July 20, 2018), *available at* <https://www.nccommerce.com/news/state-employment-figures>; and, United States Census Bureau, "Quick Facts: North Carolina (2012–2016)", *available at* <https://www.census.gov/quickfacts/fact/table/nc/PST045217>.

⁶⁷ Nation's Application at 18-19.

⁶⁸ *Id.* at 19.

reduces the amount of available funds that the Nation can use from that account for the construction of new roads for housing and economic development.

The Acting Regional Director determined, and we concur, that acquisition of the Site in trust will facilitate tribal self-determination and economic development.⁶⁹

25 C.F.R. § 151.11 – Off-Reservation Acquisition

The Nation's application is considered under the off-reservation criteria of Section 151.11 because the Site is located outside of and noncontiguous to the Tribe's existing reservation lands. Section 151.11(a) requires the consideration of the criteria listed in Sections 151.10(a) through (c), and (e) through (h), and 151.11(b) through (e), as discussed below.

25 C.F.R. § 151.10(a) – The existence of statutory authority for the acquisition and any limitations contained in such authority

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition and, if such authority exists, to consider any limitations contained in it. This section addresses the Secretary's authority to accept land into trust for the benefit of the Nation, and reviews the effect of the Settlement Act on the Nation's proposed fee-to-trust transfer.

Section 5 of the Indian Reorganization Act (IRA) authorizes the Secretary to acquire lands in trust for "Indians."⁷⁰ Section 19 of the IRA defines those "Indians" eligible to take advantage of the Act's benefits.⁷¹ The United States Supreme Court's decision in *Carcieri v. Salazar*⁷² addressed the Secretary's authority to take land into trust pursuant to Section 19's first definition of "Indian" (Category 1), and held that the word "now" in the phrase "persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction" refers to the time of the passage of the IRA in 1934. The *Carcieri* majority also acknowledged that for some tribes, Congress expanded the Secretary's authority to accept land into trust through legislation, irrespective of whether the tribe would otherwise meet the IRA's definitions of Indian.⁷³

As explained more fully below, we have determined that Section 9(a) of the Settlement Act explicitly extends the Secretary's land acquisition authority contained in Section 5 of the IRA to the Nation, and that the South Carolina-specific limitations contained in the Settlement Act do not proscribe the Secretary's authority to approve the Nation's proposed trust acquisition in North Carolina. Because the Settlement Act independently and expressly authorizes the Secretary to exercise such authority, it is unnecessary for us to determine whether the Nation was under federal jurisdiction in 1934.

⁶⁹ See Acting Regional Director's Findings of Fact at 2.

⁷⁰ Act of June 18, 1934, ch. 576, § 19, 48 Stat. 984 (IRA), codified at 25 U.S.C. § 5129.

⁷¹ *Id.*

⁷² *Carcieri v. Salazar*, 555 U.S. 379 (2009). (hereinafter *Carcieri*).

⁷³ *Carcieri*, 555 U.S. at 392.

History of the Catawba Indian Nation

The Nation is one of 30 Indian tribes or bands known to have resided in what are today the States of North Carolina and South Carolina prior to European settlement, and is the only federally recognized tribe in South Carolina.⁷⁴

Significant encroachment by settlers on the Nation's lands began around the 1730s.⁷⁵ To limit increasing tension between the Nation and settlers, the Colony of South Carolina enacted a statute restricting the purchase of Indian lands in 1739.⁷⁶ In 1754, it further barred settlers from residing within 30 miles of the Nation's villages and ordered settlers already in the area to leave.⁷⁷ Surveyors for the Colony of North Carolina, disregarding South Carolina's restriction, ran surveys directly through Catawba villages.⁷⁸ Led by Great Britain's Superintendent of Indian Affairs, colonial authorities resolved the dispute between North Carolina and South Carolina while also addressing the Nation's concerns by entering into the 1760 Treaty of Pine Hill.⁷⁹ Under the Treaty, the Catawba surrendered their claims to an area 30 miles in diameter in exchange for a 144,000-acre (225 square miles) reservation.⁸⁰

Following the end of the French and Indian War in 1763, Great Britain's Secretary of State for the Southern Department directed the governors of the southern colonies to invite the Creeks, Choctaws, Cherokees, Chickasaws, and Catawbas to Augusta, Georgia, to meet with the Indian Agent for the Southern Department to negotiate treaties.⁸¹ Here, the Catawba pressed claims for an expanded reservation that would include additional ancestral lands.⁸² In response, the Nation was told by the colonial governors that if they stood by the negotiated terms of the 1760 Treaty of Pine Hill, the Nation's previously-identified reserved lands would be surveyed and marked out for their use.⁸³ Based on these guarantees, the Catawba in 1763 entered into the Treaty of Augusta, confirming the surrender to Great Britain of its aboriginal territory in North Carolina and South Carolina in return for the permanent home on the 144,000 acres reserved for the Nation's use by the 1760 Treaty of Pine Hill.⁸⁴

⁷⁴ South Carolina Department of Archives and History, <https://scdah.sc.gov/historic-preservation/resources/native-american-heritage/federal-and-state-recognized-native> (last visited April 4, 2019) (South Carolina extends state recognition to Native American Indian Tribes, Native American Indian Groups, and Native American Indian Special Interest Organizations).

⁷⁵ Douglas Brown, *The Catawba Indians, The People of the River* at 124, 164 (1966) (Brown).

⁷⁶ *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 512 (1986) (Blackmun, J.) (dissent) (citing 1 The First Laws of the State of South Carolina, 160-61 (J. Cushing ed. 1981)).

⁷⁷ Polly Dammann, et al., *History of the Catawba Tribe and its Reservation Lands 1540-1959* (1978) (Dammann), reprinted in *Settlement of the Catawba Indian Land Claims: Hearing before the Committee on Interior and Insular Affairs, House of Representatives, on H.R. 3274*, 96th Cong. at 152 (1979).

⁷⁸ *Id.* at 154.

⁷⁹ *Id.* at 156-157 (The 1760 Treaty of Pine Hill did not survive the centuries, but is known through references in public records including the South Carolina Gazette, Aug. 9, 1760).

⁸⁰ *Catawba Indian Tribe, Inc.*, 476 U.S. 498, 500 (1986); See also, Dammann, *supra* note 77 at 157.

⁸¹ Brown, *supra* note 75 at 250; Dammann, *supra* note 77 at 158-59.

⁸² *Id.*

⁸³ *Catawba Indian Tribe, Inc.*, 476 U.S. at 500, n. 1; Dammann, *supra* note 77 at 158-163.

⁸⁴ *Catawba Indian Tribe, Inc.*, 476 U.S. at 500-501; 1763 Treaty of Augusta, Art. IV (Nov. 10, 1763), Colonial Records of North Carolina, XI at 199 (R. Vol. V-VI, Ex. 6).

During the Revolutionary War, the Nation fought on the side of the American colonies.⁸⁵ George Washington highlighted the importance of the Catawba to his early military campaigns,⁸⁶ and as President met with the Catawba to hear their concerns regarding the loss of their land.⁸⁷ Following the War, the Nation sought guarantees that the new national government would protect the Nation's lands secured by the 1760 Treaty of Pine Hill and the 1763 Treaty of Augusta. The Nation sent deputies to Congress in 1782 requesting that their land not be "intruded into by force, nor alienated even with their own consent."⁸⁸ Congress responded with a resolution recommending that the South Carolina legislature "take such measures for the satisfaction and security of said tribe as the said legislature shall, in their wisdom, think fit."⁸⁹ In the decades that followed, the Catawba began leasing their lands, and by 1840, the Nation had leased most, if not all of the land secured by the 1763 Treaty of Augusta to non-Indian settlers.⁹⁰ As disputes with the Nation grew, lessees began petitioning South Carolina to arrange a treaty by which the Nation would cede its claims to the leased land.⁹¹

On March 13, 1840, South Carolina commissioners met with the Nation and negotiated an agreement known as the Treaty of Nation Ford.⁹² Under the agreement, the Nation agreed to convey its interests in the lands reserved by the 1763 Treaty of Augusta to South Carolina in return for promises to purchase lands for a new reservation.⁹³ South Carolina ultimately fulfilled such purchases in 1842, buying 630 acres of land within the area reserved for the Nation by the 1763 Treaty of Augusta.⁹⁴ South Carolina proceeded to hold the 630 acres in trust for the Nation until 1993, when the Settlement Act provided for its transfer to the United States in trust for the benefit of the Nation.⁹⁵

In the wake of the Nation Ford agreement, the Nation in 1847 wrote to President James K. Polk asking for "the necessary means of removing us the undersigned Catawba Indians west of the Mississippi River."⁹⁶ In 1848, Congress enacted legislation appropriating \$5,000 for the removal of the Catawba Indians "to the Indian country west of the Mississippi, with the consent of said tribe, under the direction of the President of the United States . . ."⁹⁷ Federal officials made efforts to arrange for the Catawba's resettlement amongst the Cherokee, but the Cherokee

⁸⁵ Dammann, *supra* note 77 at 150.

⁸⁶ Letter, George Washington to Robert Dinwiddie, Governor of Virginia (Apr. 24, 1756) (Washington was serving as commander for all Virginia troops during the French-Indian War).

⁸⁷ The Diaries of George Washington, Volume VI, January 1790-December 1799, Published 1979, Library of Congress.

⁸⁸ 23 JOURNALS OF THE CONTINENTAL CONGRESS 706-07 (Nov. 2, 1782); *See also* H. Lewis Scaife, *Catawba Indians of South Carolina, History and Condition of the Catawba Indians of South Carolina*, 5-6 (1896) (Scaife).

⁸⁹ *Id.* *See also* Scaife, *supra* note 88 at 5-6.

⁹⁰ *Catawba Indian Tribe, Inc.*, 476 U.S. at 501; Dammann, *supra* note 77 at 180.

⁹¹ Dammann, *supra* note 77 at 180.

⁹² *Catawba Indian Tribe, Inc.*, 476 U.S. at 501.

⁹³ *Id.*; Dammann, *supra* note 77 at 183.

⁹⁴ Brown, *supra* note 75 at 320.

⁹⁵ Settlement Act at § 12(a).

⁹⁶ Brown, *supra* note 75 at 324.

⁹⁷ Act of July 29, 1848, ch. 118 (Act making Appropriations for the Current and Continuing Expenses of the Indian Department), 9 Stat. 252, 264.

were unwilling to allow another tribe to share or occupy their land without compensation.⁹⁸ In 1854, Congress once again appropriated funds for the Nation's removal to Indian Territory.⁹⁹ Over the next several years, federal officials worked unsuccessfully with the Choctaw and Chickasaw Tribes in Indian Territory to resettle the Catawba among them.¹⁰⁰

Tribal Land Claims

Toward the end of the nineteenth century, the Nation began seeking federal assistance in bringing claims against South Carolina for the unlawful conveyance of its reservation lands through the 1840 Nation Ford agreement. The Nation petitioned the Department in 1887 and 1895 for assistance in resolving its claims, without result.¹⁰¹ In 1905 and 1908, the Nation again sought the Department's assistance in bringing suit to recover its lands on the grounds that the 1840 Nation Ford agreement was void under the Nonintercourse Act.¹⁰² The Commissioner of Indian Affairs declined the Nation's request, in part on the basis that the Catawba were "state" Indians who had never been recognized by the federal government.¹⁰³

The Commissioner's views of the Nation's federally recognized status were contrary to those of Congress, which twice enacted legislation appropriating funds specifically for the Nation's removal. His views were also contrary to the contemporary and subsequent views of other Departmental officials. In 1910, for example, the Superintendent of the Cherokee Agency reported that the Catawba "should be looked after more closely by the General Government and protected in their rights."¹⁰⁴ He suggested that the Commissioner travel to South Carolina to "investigate the condition of the Catawbas with the view of giving them help in establishing and protecting their rights. . ."¹⁰⁵

In 1911, however, the Commissioner's Annual Report described the Catawba as having been "more or less" independent of federal supervision, with South Carolina having "assumed sovereign rights over the tribe and its former landed rights" without objection from the federal government.¹⁰⁶ The report on which the Commissioner relied asserted that South Carolina had "assumed sovereign rights over the tribe and its former landed rights, and the federal government

⁹⁸ Scaife, *supra* note 88 at 9.

⁹⁹ Act of July 31, 1854, ch. 167 (Act making Appropriations for the Current and Contingent Expenses of the Indian Department), 10 Stat. 315, 316.

¹⁰⁰ See Letter, Office of Indian Affairs to F.M. Crutsinger (Apr. 29, 1911), in *Survey of Conditions of Indians in the United States: Hearings before a Subcommittee of the Senate Committee on Indian Affairs, United States Senate*, Part 16, 71st Cong. at 7579. See also Memorandum, D'Arcy McNickle to Commissioner of Indian Affairs (1937).

¹⁰¹ H. Rpt. 103-257 at 16 (Sep. 27, 1993); *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 516-517 (1986) (Blackmun, J.) (dissent).

¹⁰² Testimony, Congressman John M. Spratt, Jr., 9 (Jul. 2, 1993) (Reprinted in hearing on H.R. 2399, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993: before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, One Hundred Third Congress, first session, Jul. 2, 1993, pg. 154-190).

¹⁰³ Dammann, *supra* note 77 at 187 (citing Letter, F.E. Leupp, Commissioner of Indian Affairs (Jan. 23, 1906).

¹⁰⁴ Letter, Frank Kyselka, Superintendent, Cherokee Agency to the Commissioner of Indian Affairs, (Mar. 25, 1910).

¹⁰⁵ *Id.*

¹⁰⁶ Annual Report of the Commissioner of Indian Affairs at 44-45 (1911).

has never interposed objection, and in such way, the State has exercised guardianship over the band, and the tribe has been in the position of wards of the State.”¹⁰⁷ That report’s author, Special Indian Agent Charles Davis, noted that while South Carolina provided schooling for Catawba children, a number of Catawba children also attended the Carlisle Indian School.¹⁰⁸ By 1977, the Solicitor of the Interior Department had concluded that the Department’s rationale for refusing to assist the Nation in 1905 and 1908 was incorrect. The Solicitor went on to formally request the Department of Justice (DOJ) institute legal action on the Nation’s behalf, a recommendation that contributed to legislation formally restoring the Nation’s federal recognition and resolving its aboriginal land claims.¹⁰⁹

In the United States Senate, the Committee on Indian Affairs (Senate Committee) was directed in 1928 to “make a general survey of the condition of the Indians and of the operation and effect of the laws which Congress has passed for the civilization and protection of the Indian tribes.”¹¹⁰ In carrying out these duties, on March 28, 1930, Committee members Lynn Frazier of North Dakota and Elmer Thomas of Oklahoma held field hearings on the Catawba Indian Reservation in South Carolina, taking testimony and evidence from tribal members, federal officials, and local stakeholders regarding the Nation’s status and condition.¹¹¹

The impact of this visit on Senator Frazier and Senator Thomas may be seen in their subsequent discussions of the draft legislation that became the Indian Reorganization Act, and in particular its definition of “Indian.”¹¹² In hearings before the Senate Committee on the draft IRA, Chairman Wheeler, Senators Thomas and Frazier and Commissioner of Indian Affairs John Collier discussed whether the draft IRA’s definition of “Indian” would cover the Catawba.¹¹³ It was during this colloquy that Commissioner Collier suggested adding the phrase “now under federal jurisdiction” to the IRA’s first definition of “Indian.”¹¹⁴

In 1942, the Secretary approved an agreement between the Department, South Carolina, and the Nation under which South Carolina acquired 3,434 acres of land near the Nation’s existing reservation and conveyed it in trust to the United States for the Nation.¹¹⁵ In separate memoranda issued in 1944, the Solicitor affirmed the Nation’s eligibility to organize and adopt

¹⁰⁷ Report, Special Indian Agent Davis to Commissioner on Indian Affairs, (Jan. 9, 1911).

¹⁰⁸ *Id.*

¹⁰⁹ See *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 517-518 (1986).

¹¹⁰ 69 CONG. REC. 2,368 (Feb. 2, 1928) (Sen. Res. No. 79).

¹¹¹ *Survey of Conditions of Indians in the United States, Hearings before a Subcommittee of the Committee on Indian Affairs, United States Senate, Pursuant to S. Res. 79, S. Res. 308 and S. Res 263 at 7535-7601* (Mar. 28, 1930).

¹¹² *To Grant to Indians Living under Federal Tutelage the Freedom to Organize for Purposes of Local Self Government and Economic Enterprise: Hearings on S. 2755 and S. 3645 before the Committee on Indian Affairs, United States Senate, Pt. 2*, 73rd Cong. at 263-266 (May 17, 1934) (Sen. Hrgs.).

¹¹³ Sen. Hrgs. (May 17, 1934) at 263; *id.* at 265 (further describing the Catawba as descendants living on a reservation).

¹¹⁴ *Id.* at 266.

¹¹⁵ Memorandum of Understanding Between the State of South Carolina, the Catawba Indian Tribe, the United States Department of the Interior and the Farm Security Administration of the United States Department of Agriculture (Jan. 13, 1942).

an IRA constitution.¹¹⁶ Rebuking the suggestion of Commissioner Collier that the federal government had not previously considered the Catawba as “Federal wards,” the Solicitor expressly found the Nation to have been previously “recognized by the Federal government” through legislation enacted for their removal in 1848 and 1854, and the Nation to have “continuously maintained” its tribal organization ever since.¹¹⁷ Because the Nation existed as such and received recognition by the federal government, it was entitled to vote to organize and adopt a constitution under the IRA.¹¹⁸ After the Nation did so later that year, the Department included the Catawba in its list of all the tribes to which the Department had found the IRA applicable.¹¹⁹

In 1953, Congress passed House Concurrent Resolution 108.¹²⁰ This marked the beginning of the “termination era” in which the federal government sought to terminate its supervisory responsibilities for Indian tribes.¹²¹ Consistent with this policy, Congress in 1959 enacted legislation lifting federal restrictions against alienation of the Nation’s federal Reservation, distributing tribal assets, and terminating federal supervision of the Nation and its members.¹²²

Despite termination of its federal supervision, the Nation was encouraged by aboriginal land claims being brought by other eastern Indian tribes.¹²³ In the 1970s, the Nation again sought the Department’s assistance in pursuing the Nation’s long-standing claims challenging the conveyance of the reservation set aside for it by the 1763 Treaty of Augusta to South Carolina under the 1840 Nation Ford agreement.¹²⁴ Unlike the Nation’s earlier requests, the Department now responded favorably, and in a letter dated August 30, 1977, the Solicitor formally recommended that DOJ consider initiating litigation on the Nation’s behalf.¹²⁵ The Solicitor concluded that the basis of the Department’s earlier refusals to assist the Nation were not legally justified, and that the Nation could establish a *prima facie* claim to the 144,000-acre reservation.¹²⁶ After consultation, the Department and DOJ elected to pursue a negotiated

¹¹⁶ II OP. SOL. ON INDIAN AFFS. 1255 (Mar. 20, 1944) (“Catawba Tribe – Recognition Under IRA”); II OP. SOL. ON INDIAN AFFS. 1261 (Mar. 20, 1944) (“Questions of the Catawbas’ Identity and Organization as a Tribe and Right to Adopt IRA Constitution”).

¹¹⁷ II OP. SOL. ON INDIAN AFFS. 1255 (Mar. 20, 1944). *See also* II OP. SOL. ON INDIAN AFFS. 1261 (Catawba Indians “exist as a tribe and have had a known tribal existence for almost a century”).

¹¹⁸ II OP. SOL. ON INDIAN AFFS. at 1262.

¹¹⁹ Theodore Haas, *Ten Years of Tribal Government under IRA* (1947) (“Haas Report”). The Haas Report listed reservations where Indian residents voted to accept or reject the IRA, Haas Report at 13 (table A), tribes that reorganized under the IRA, *id.* at 21 (table B), tribes that accepted the IRA with pre-IRA constitutions, *ide* at 31 (table C), and tribes not under the IRA with constitutions, *id.* at 33 (table D).

¹²⁰ H.R. Con. Res. 108, 83d Cong, 1st Sess. (1953), 67 Stat B132.

¹²¹ *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 503 (1986).

¹²² Pub. L. 86-322 (Sep. 21, 1959), 73 Stat. 592 (“Termination Act”). The Termination Act did not affect the Tribe’s 630-acre state reservation, which continued be held for the Tribe by South Carolina. *See* Settlement Act, § 3(4).

¹²³ *See e.g. Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975) (the court interpreted the Nonintercourse Act restrictions to apply to all tribally held land rejecting the distinction between federally recognized and state Indians).

¹²⁴ *Catawba Indian Tribe, Inc.*, 476 U.S. at 516-517.

¹²⁵ U.S. Dep’t of the Interior, Office of the Solicitor, to U.S. Dep’t of Justice, Acting Asst. Atty. Gen. James W. Moorman (Aug. 30, 1977).

¹²⁶ *Id.*

settlement in lieu of litigation.¹²⁷ When the settlement legislation introduced in Congress failed, the Nation then filed its own suit in federal court in 1980.¹²⁸

Settlement Act and Settlement Agreement

In August 1992, after more than a decade of litigation,¹²⁹ the Nation and South Carolina negotiated an approximately fifty page “Agreement in Principle”¹³⁰ to settle the Nation’s long-standing land claims.¹³¹ As part of the Agreement in Principle, the Nation and South Carolina negotiated extensive provisions regarding land acquisition,¹³² gaming,¹³³ tax treatment¹³⁴ and jurisdiction¹³⁵ for the Nation’s existing and future lands within South Carolina. The Nation and South Carolina then worked to effectuate the Agreement in Principle, including congressional restoration of the Nation’s federal trust relationship,¹³⁶ through the enactment of state and federal implementing legislation.¹³⁷

The Subcommittee on Native American Affairs for the United States House Committee on Natural Resources held a hearing on July 2, 1993, to accept testimony on federal implementing legislation.¹³⁸ On October 27, 1993, Congress passed the Settlement Act implementing the terms of the Nation’s agreement with South Carolina and restored the federal trust relationship between the Nation and the United States.¹³⁹ The South Carolina legislature approved state implementing legislation on June 14, 1993, with the finalized Agreement in Principle attached and defined as the Settlement Agreement.¹⁴⁰

¹²⁷ 476 U.S. at 518 (Blackmun, J.) (dissent).

¹²⁸ *Id.*

¹²⁹ See, *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498 (1986); *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 865 F.2d 1444 (4th Cir. 1989); *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 978 F.2d 1334 (4th Cir. 1992); *Catawba Indian Tribe of South Carolina v. United States*, 24 Cl. Ct. 24 (1991).

¹³⁰ Memorandum of Agreement between the Catawba Indian Tribe of South Carolina and the State of South Carolina, (Nov. 29, 1993)(MOA)(South Carolina Governor Campbell and Catawba Chief Blue signed the MOA memorializing the parties’ commitment and agreement to carry out the Agreement in Principle and the federal and state implementing legislation).

¹³¹ MOA at ¶ 2.

¹³² See e.g., Settlement Agreement at § 14 (“Establishment of Expanded Reservation”).

¹³³ *Id.* at § 16 (Games of Chance).

¹³⁴ *Id.* at § 18 (Taxation).

¹³⁵ *Id.* at § 10 (Jurisdiction and Governance of the Reservation); Settlement Agreement at § 15.

¹³⁶ Settlement Agreement at § 4 (Restoration of the Federal Trust Relationship).

¹³⁷ MOA at ¶ 1.

¹³⁸ Hearing on H.R. 2399, *Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993*: before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, One Hundred Third Congress, first session, Jul. 2, 1993.

¹³⁹ Settlement Act, §§ 4(a)(1)-(2), (c).

¹⁴⁰ S.C. CODE ANN. § 27-16-10 et seq. (2019)(Catawba Indian Claims Settlement Act); S.C. CODE ANN. § 27-16-30(12)(Agreement in Principle is attached to the copy of the Catawba Indian Claims Settlement Act filed with the South Carolina Secretary of State and is defined as the Settlement Agreement.)(Settlement Agreement).

Applicable laws

The conclusions reached in this decision require analysis of the federal Settlement Act,¹⁴¹ the state implementing legislation known as the Catawba Indian Claims Settlement Act,¹⁴² and the Agreement in Principle attached to the state implementing legislation defined therein as the Settlement Agreement.¹⁴³ The initial focus of the analysis is on the Secretary's authority under the IRA, and whether the Settlement Act extended that authority to the Nation consistent with footnote 6 in the Supreme Court's majority decision in *Carcieri* and previous Solicitor's opinions. We conclude by examining whether any provisions in the Settlement Act or Settlement Agreement are inconsistent with the Secretary's Section 5 IRA authority to process the Nation's fee-to-trust Application. A decision from the United States Court of Appeals for the Second Circuit interpreting comparable language from the Mashantucket Pequot Indian Claims Settlement Act, *Conn. Ex. Rel. Blumenthal v. U.S. Dep't. of the Interior*, provides persuasive authority for the analysis.¹⁴⁴

Standard of review - Solicitor's Guidance

The first definition of "Indian" applies to "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction."¹⁴⁵ To guide the Department in implementing the Secretary's trust-acquisition authority after *Carcieri*, the Solicitor issued a four-step procedure (Solicitor's Guidance) to determine eligibility under Category 1.¹⁴⁶ At Step One, we must assess whether Congress made the IRA applicable to the applicant tribe through separate statutory authority. Existence of such authority makes it unnecessary to determine if the tribe was "under federal jurisdiction" in 1934. Only in the absence of such authority does the analysis proceed to Step Two.

Analysis

Separate Statutory Authority Made the IRA Applicable to the Nation

At Step One, we must determine whether Congress made the IRA applicable to the applicant tribe through separate statutory authority.¹⁴⁷ Section 5 of the IRA authorizes the Secretary, in his discretion, to acquire "any interest in lands, water rights, or surface rights to lands (...) for the purpose of providing lands for Indians."¹⁴⁸ It further provides that "[t]itle to any lands or rights

¹⁴¹ Settlement Act.

¹⁴² Catawba Indian Claims Settlement Act.

¹⁴³ Catawba Indian Claims Settlement Act at § 27-16-30(12).

¹⁴⁴ *Conn. Ex. Rel. Blumenthal v. U.S. Dep't. of the Interior*, 228 F.3d 82 (2nd Cir. 2000), *cert. denied*, 532 U.S. 1007 (2001)

¹⁴⁵ 25 U.S.C. § 5129.

¹⁴⁶ *Procedure for Determining Eligibility for Land-into-Trust under the First Definition of "Indian" in Section 19 of the Indian Reorganization Act*, Memorandum from the Solicitor to Regional Solicitors, Field Solicitors, and SOL-Division of Indian Affairs (Mar. 9, 2020)(hereafter Solicitor's Guidance).

¹⁴⁷ Solicitor's Guidance at 1-2.

¹⁴⁸ 25 U.S.C. § 5108.

acquired pursuant to this Act (...) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired.”

As noted above, the decision in *Carcieri* specifically addressed the Secretary’s authority to take land into trust under the Category 1 definition of “Indian.”¹⁴⁹ Based on the facts of the case, the Supreme Court did not address the Secretary’s authority to take land into trust for groups that fall under Section 19’s other definitions of “Indian,” or for groups subject to separate legislation authorizing the Department to apply the IRA or otherwise take land into trust for a tribe’s benefit.

The Supreme Court concluded that the term “now” in the phrase “now under federal jurisdiction” unambiguously refers to tribes that were under federal jurisdiction in 1934 at the time of the IRA’s passage.¹⁵⁰ In reaching this result, the Supreme Court rejected several arguments by the United States that the term “now” as used in Section 19 was ambiguous. As relevant here, the Supreme Court rejected the claim that the phrase “shall include” in Section 19’s introductory clause left an interpretive gap for the agency to fill, concluding instead that Congress had “explicitly and comprehensively defined the term by including only three discrete definitions” of “Indian.”¹⁵¹ In support of its reasoning, the Supreme Court in footnote six of its decision listed examples of subsequent statutes in which Congress expanded the Secretary’s IRA authority “to particular Indian tribes not necessarily encompassed” within the definitions of Section 19.¹⁵² Had Congress understood Section 19’s use of “include” to encompass tribes falling outside Section 19’s three definitions, “Congress would not have needed to enact these additional statutory references to specific Tribes.”¹⁵³

Relying on the majority’s reasoning and the statutory examples it cites, the Solicitor subsequently issued six opinions identifying six other statutes in which Congress expanded the Secretary’s authority to take land into trust under the IRA to particular tribes that might not necessarily be encompassed by Section 19’s definition of “Indian.”¹⁵⁴ After examining the terms

¹⁴⁹ Section 19 of the IRA defines those “Indians” eligible for Section 5 IRA benefits as: [1] all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and [2] all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include [3] all other persons of one-half or more Indian blood. Act of June 18, 1934, ch. 576, § 19, 48 Stat. 984 (IRA), codified at 25 U.S.C. § 5129 (bracketed numbers added).

¹⁵⁰ *Carcieri*, 555 U.S. at 395.

¹⁵¹ *Id.* at 391.

¹⁵² *Id.* at 392 n. 6.

¹⁵³ *Id.* at 392.

¹⁵⁴ U.S. Dept. of the Interior, Office of the Field Solicitor, Memorandum to BIA Western Reg. Dir. (May 15, 2009) (Tonto-Apache Tribe, Pub. L. 92-470 (Oct. 6, 1972), 86 Stat. 783); Letter, BIA Western Reg. Dir. to Chairman, Pascua Yaqui Tribe of Arizona (Mar. 26, 2014) (Pascua Yaqui Tribe, Pub. L. 95-375, § 1 (Sept. 18, 1978), 92 Stat. 712); Office of the Solicitor, Memorandum to BIA Eastern Reg. Dir. (Jan. 19, 2017) (Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98-134, § 9 (Oct. 18, 1983), 97 Stat. 855); Office of the Solicitor, Pac. Northwest Reg. to BIA Northwest Reg. Dir. (Dec. 22, 2016) (Coquille Restoration Act, Pub. L. 101-42, § 3 (Jun. 28, 1989), 103 Stat. 91); Office of the Solicitor, Pac. Northwest Reg. to BIA Northwest Reg. Dir. (Jan. 12, 2017) (Cow Creek Band of Umpqua Tribe of Indians Restoration Act, Pub. L. 97-391, § 3 (Dec. 29, 1982), 96 Stat. 1960, as amended, Pub. L. 100-139, § 5 (b) (Oct. 26, 1987), 101 Stat. 827); and Office of the Solicitor, Knoxville Field Office to BIA Eastern Regional Dir. (Jul. 30, 2016) (Coushatta Tribe of Louisiana, Pub. L. 100-411 (Aug. 22, 1988), 102 Stat. 1097).

of each statute, the Solicitor concluded that each such statute made the IRA applicable to the particular tribe or tribes for which the statute was enacted.¹⁵⁵ By so doing, the Solicitor concluded that Congress rendered the question of whether such tribes were “under federal jurisdiction” immaterial. We conclude that the terms of the Settlement Act and the Settlement Agreement require us here to reach the same result here.

The Settlement Act Expressly Extends the IRA to the Nation

Section 4(b) of the Settlement Act generally addresses the Nation’s eligibility for federal benefits and services upon restoration of the federal trust relationship, providing that the Nation “shall be eligible for all benefits and services furnished to federally recognized Indian tribes and their members because of their status as Indians.” Section 9(a) of the Settlement Act specifically made the Nation subject to the terms of the IRA. Section 9(a) reads in pertinent part:

Indian Reorganization Act. – If the Tribe so elects, it may organize under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the ‘Indian Reorganization Act’). The Tribe *shall be subject to such Act except to the extent such sections are inconsistent with this subchapter.*¹⁵⁶

The language of Section 9(a) parallels that found in the statutes cited by the *Carcieri* majority¹⁵⁷ as well as those later assessed by the Solicitor as having extended the IRA to particular tribes.¹⁵⁸ The Act restoring federal recognition to the Ysleta del Sur Pueblo for example provides that:

(a) Federal Trust Relationship. – The Federal trust relationship between the United States and the tribe is hereby restored. The Act of June 18, 1934 (48 Stat. 984), as amended, and all laws and rules of law of the United States of general application to Indians, to nations, tribes or bands of Indians, or to Indian reservations which are not inconsistent with any specific provision contained in this subchapter shall apply to the members of the tribe, the tribe, and the reservation.¹⁵⁹

¹⁵⁵ Mashantucket Pequot Op. (Jan. 19, 2017) (IRA applied to Tribe as a law of general application under the Act); Cow Creek (Jan. 12, 2017) (act applied IRA generally and no language in the Act specifically restricted the application of Section 5); Louisiana Coushatta Op. (Jul. 30, 2016) (Act applied IRA generally and no language in the Act specifically restricted the application of Section 5); Coquille Op. (Dec. 22, 2016) (Act specifically made IRA applicable to the Tribe and its members); Pasqua Yaqui Op. (Mar. 26, 2014) (Act specifically made IRA applicable to the Tribe and its members); Ysleta del Sur Op. (Apr. 15, 2014) (Act applied IRA generally and no language in the Act specifically restricted the application of Section 5); Tonto Apache Op. (May 15, 2009) (Act specifically referenced “25 U.S.C. 461 - 479” which was inclusive of § 465, being Section 5 of the IRA).

¹⁵⁶ Settlement Act at § 9(a)(emphasis added).

¹⁵⁷ *Carcieri* at 392 n. 6 (citing Act of May 1, 1936, ch. 254, 49 Stat. 1250 (extending IRA to Territory of Alaska); Shawnee Tribe Status Act of 2000, Pub. L. 106–568, Title VII, § 707 (Dec. 27, 2000), 114 Stat. 2913; Texas Band of Kickapoo Act, Pub. L. 97–429, § 5 (Jan. 8, 1983), 96 Stat. 2270); Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act, Pub. L. 100–89, title I, § 103 (Aug. 18, 1987), 101 Stat. 667).

¹⁵⁸ See e.g., Ysleta del Sur Op. (Apr. 15, 2014) (Act applied IRA generally and no language in the Act specifically restricted the application of Section 5).

¹⁵⁹ Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act, Title I, §103(a), Pub. L. 100–89 (Aug. 18, 1987), 101 Stat. 667.

The Regional Solicitor concluded that the language in the Ysleta Del Sur Restoration Act indicated Congress' intent to include the Ysleta del Sur Pueblo in the IRA Section 19 definition of "Indian" and that the Act thereby extended to the Pueblo the Secretary's IRA Section 5 land acquisition. Similarly, by making the Catawba eligible to "organize under" and "subject to" the IRA, Congress determined that the Nation was eligible for the benefits of the IRA and extended to the Nation the Secretarial authority to take lands into trust contained in Section 5. That the benefits Section 9(a) makes available to the Nation include the authority for the Secretary to take land into trust for the benefit of the Nation pursuant to Section 5 of the IRA is made amply clear by the many provisions of the Settlement Act and the Settlement Agreement that govern the Secretary's implementation of authority to take land into trust for the Nation.

For example, Section 3(7) of the Settlement Act defines the terms "Reservation" and "Expanded Reservation" as lands "to be held in trust by the Secretary in accordance with this Act." Section 12(m) of the Settlement Act expressly makes the Department's general land acquisition regulations at 25 C.F.R. Part 151 inapplicable to land acquisitions authorized under that section, while Section 14.16 of the Settlement Agreement does the same. Section 15(c) of the Settlement Act renders federal laws that apply to lands held in trust for Indians inapplicable within South Carolina. Section 14.2.5 of the Settlement Agreement identifies certain lands that "the Secretary may take into trust" for the Nation. Finally, Section 14.8 of the Settlement Agreement governs the conveyance of lands purchased by the United States in trust for the Nation.

In sum, the Settlement Agreement restored federal recognition to the Nation and expressly extended the benefits of the IRA to the Nation. The purpose and the provisions of the Settlement Act make clear that these benefits include the ability to have the Secretary take lands into trust for the Nation pursuant to Section 5 of the IRA. To conclude otherwise would be inconsistent with the plain language of the Settlement Act. For these reasons, we conclude that no further analysis is required to determine that the Secretary has authority under Section 5 of the IRA, as made applicable to the Nation by Section 9(a) of the Settlement Act, to take land into trust for the Nation.

The Secretary's Section 5 IRA Authority to Accept the Parcel in Trust

Because application of the IRA to the Nation is limited only to the extent it is inconsistent with the specific provisions of the Settlement Act, it is necessary to determine if any other sections of the Settlement Act restrict or curtail the applicability of Section 5 of the IRA to the Nation. Under the Settlement Act and the Settlement Agreement, the Secretary's trust acquisition authority depends, at least in part, on the location of the Nation's property. Section 12 of the Settlement Act and Section 14 of the Settlement Agreement specifically address the unique issues related to the creation of a federal reservation within South Carolina. Section 13 of the Settlement Act and Section 15 of the Settlement Agreement, by contrast, address non-Reservation lands.¹⁶⁰ The Settlement Act contains no express language either authorizing or restricting the Secretary's authority with respect to lands outside of South Carolina. Thus, whether Congress intended the restrictive trust acquisition provisions contained in the Settlement

¹⁶⁰ Settlement Act at § 13; Settlement Agreement § 15 (Non-Reservation Properties).

Agreement and Settlement Act to apply to the Parcel – which is not located in South Carolina – is ambiguous.¹⁶¹

Expanded Reservation

One of the primary purposes of the Settlement Act was to implement the comprehensive Settlement Agreement provisions for establishing the Nation’s Expanded Reservation within the State.¹⁶² Section 12(a) of the Settlement Act authorizes the Secretary to receive the Nation’s existing 630-acre state reservation and hold it in trust. The Settlement Act also authorized the federal government to appropriate \$32 million¹⁶³ and collect \$18 million from the State and local governmental and private sources in support of the settlement.¹⁶⁴ A portion such funds were to be set aside in a Land Acquisition Trust Fund for costs associated with the Nation’s land acquisition of both Expanded Reservation and non-Reservation properties.¹⁶⁵ Sections 12(b) through 12(m) implement Section 14 of the Settlement Agreement, detailing a framework under which the Nation can acquire additional land in trust for the Expanded Reservation within certain defined expansion zones, all located in South Carolina.¹⁶⁶

Section 14 of the Settlement Agreement defines the boundaries of the primary and secondary expansion zones¹⁶⁷ and allows the Nation to propose different or additional expansion zones, provided that any new zone is first “approved by ordinance of the county council where the zone is located, and by law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor.”¹⁶⁸ The Nation can seek to acquire and convey into trust up to a maximum of 4,200 acres for the Expanded Reservation within these defined expansion zones.¹⁶⁹ Section 12(b)(6) of the Settlement Act expressly authorizes the Secretary to accept conveyance of the Nation’s lands within the expansion zones into trust as part of the Expanded Reservation.

Congress made clear its intention that “[a]ll properties acquired by the Nation shall be acquired subject to the terms and conditions set forth in the Settlement Agreement.”¹⁷⁰ Further, that under the Settlement Act, the Nation is precluded from requesting that “any land be placed in reservation status, unless those lands were acquired by the Nation and qualify for reservation status in full compliance with the Settlement Agreement, including section 14 thereof.”¹⁷¹ It is self-evident that these restrictive provisions apply to any trust acquisition within the boundaries

¹⁶¹ This memorandum reflects the conclusions of the Office of the Solicitor without application of the Indian canon of statutory construction, which states that “statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.” *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985). Should a federal court decide that application of the Indian canon is appropriate in interpreting the Settlement Act, the conclusions reached by memorandum will remain the same, but strengthened.

¹⁶² Settlement Act at § 2(b).

¹⁶³ *Id.* at § 5(a).

¹⁶⁴ *Id.* at § 5(c)

¹⁶⁵ *Id.* at § 11

¹⁶⁶ *Id.* at § 12.

¹⁶⁷ Settlement Agreement at §§ 14.3 (Primary Expansion Zone), 14.4 (Secondary Expansion Zone).

¹⁶⁸ *Id.* at § 14.5 (Other Expansion Zone).

¹⁶⁹ *Id.* § 14.2.5.

¹⁷⁰ Settlement Act § 12(f).

¹⁷¹ *Id.* § 12(b)(3).

of the Expanded Reservation – an area located entirely within South Carolina.¹⁷² One could argue that the preceding language represents a comprehensive framework for all lands the Nation seeks to convey into trust, including lands located outside South Carolina. Such a narrow reading of the Settlement Act, however, is contrary to the statutory language and the broad extension of the Secretary’s general authority to take lands into trust for the Nation under Section 5 of the IRA.

The case of *Conn. ex. rel. Blumenthal*¹⁷³ is instructive to our analysis. There, the Second Circuit was required to determine whether the Connecticut Indian Land Claims Settlement Act (Connecticut Act) prohibited the Secretary from taking land outside an area designated by the statute into trust on for the Mashantucket Pequot Tribe of Indians pursuant to the IRA.¹⁷⁴ Like the Settlement Act here, the Connecticut Act expressly authorized the Secretary to accept into trust certain land located within a designated area, but was silent regarding the Secretary’s general authority to take land into trust outside that designated area. The Second Circuit viewed this statutory silence as authorizing the Secretary to take such lands into trust, finding that “[n]othing in [the Connecticut Act] supplants the Secretary’s power under the IRA to take into trust lands” outside the designated area.¹⁷⁵

Similar to the Connecticut Act, nothing in the Settlement Act expressly limits the Secretary’s power under the IRA to take land that is located outside South Carolina into trust for the Nation. Without such a specific limitation, we cannot find that Congress intended to restrict the Secretary’s land acquisition authority under the IRA outside South Carolina.

Comparison with the Maine Indian Claims Settlement Act (MICSA),¹⁷⁶ on which the Settlement Act is modeled,¹⁷⁷ sheds further light on congressional intent. In MICSA, which settled the land claims of the Passamaquoddy and Penobscot tribes in 1980, Congress chose not to extend the Secretary’s broad authority to take land into trust under Section 5 of the IRA. Rather, Congress expressly precluded the Secretary from taking any lands into trust under any authority other than the Act providing that “[e]xcept for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians (...).”¹⁷⁸ That Congress omitted similar language in the Settlement Act reflects a conscious decision by

¹⁷² Settlement Act at § 12(c), *See also*, Map, Catawba Primary and Secondary Expansion Zones.

¹⁷³ *Conn. Ex. Rel. Blumenthal v. U.S. Dep’t. of the Interior*, 228 F.3d 82 (2nd Cir. 2000), cert. denied, 532 U.S. 1007 (2001).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 88.

¹⁷⁶ Maine Indian Claims Settlement Act of 1980, Pub. L. 96-420, formally codified at 25 U.S.C. §1721 et seq. (omitted from the editorial reclassification of Title 25)(MICSA).

¹⁷⁷ Native American Rights Fund Legal Review, Volume 18, No. 1, pg. 1 (Winter/Spring 1993)(Reprinted in hearing on H.R. 2399, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993: before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, One Hundred Third Congress, first session, Jul. 2, 1993, pg. 866); Testimony of Carroll Campbell, Governor of the State of South Carolina, 9-10)(Reprinted in hearing on H.R. 2399, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993: before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, One Hundred Third Congress, first session, Jul. 2, 1993, pg. 232, 240-41).

¹⁷⁸ MICSA at § 5(e).

Congress not to restrict Catawba land acquisitions in the same manner as those of the federally recognized tribes in Maine.

Non-Reservation Lands

Section 15 of the Settlement Agreement authorizes the Nation to draw on funds from the Land Acquisition Trust Fund to purchase such lands located outside the Expanded Reservation,¹⁷⁹ but these “non-Reservation” lands are held in fee simple by the Nation “as a corporate entity or by a subentity of the Nation.”¹⁸⁰ The non-Reservation parcels are not subject to federal restrictions on alienation¹⁸¹ and South Carolina civil, criminal, and regulatory jurisdiction apply to such parcels in the same manner jurisdiction would apply to any other properties held by non-Indians located in the same jurisdiction.¹⁸² Section 13 of the Settlement Act extends these South Carolina-specific provisions to “all non-Reservation lands.” Thus, a literal reading of Section 13 of the Settlement Act would require that *any* lands the Nation acquires outside the Expanded Reservation, including lands outside South Carolina, would be subject to South Carolina civil, criminal and regulatory jurisdiction. However, applying such a reading raises serious jurisdictional conflicts and produces an absurd result if applied to the Site in North Carolina.¹⁸³ To avoid such a conclusion the South Carolina-specific provisions of Section 13 should be interpreted as applying to non-Reservation lands outside the Expanded Reservation but within the State.

This interpretation comports with the underlying settlement negotiations. As a party to the Settlement Agreement, South Carolina negotiated terms consistent with its interests, and the terms of the Settlement Act clearly provide limitations on the Secretary’s authority to accept land into trust within South Carolina’s borders. North Carolina, however, was not a party to the Settlement Agreement and is only referenced in provisions of the Settlement Act that define the Nation’s aboriginal territory and service area.¹⁸⁴

In sum, there is nothing in the Settlement Act inconsistent with the Secretary’s authority to take lands into trust for the Nation outside the State. And while the Settlement Act limits the exercise of the Secretary’s trust-acquisition authority under Section 5 of the IRA with respect to lands the Nation seeks to acquire in trust within South Carolina, the Secretary’s broad authority is otherwise undisturbed by the provisions of the Settlement Act. Thus, any such acquisition in North Carolina, to include the Site, is governed by the IRA and the Department’s implementing regulations, policies and procedures.

¹⁷⁹ Settlement Agreement at § 15.

¹⁸⁰ *Id.* § 15.1.

¹⁸¹ *Id.* § 15.2.

¹⁸² Settlement Act § 13; Settlement Agreement at §§ 4.3, 15.

¹⁸³ See *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available”); see also *K Marl Corp. v. Cartier, Inc.*, 486 U.S. 281, 324 n.2 (1988) (Scalia, J. concurring in part and dissenting in part) (“it is a venerable principle that a law will not be interpreted to produce absurd results”). See also, *Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060, 1068 (D.C.Cir.1998).

¹⁸⁴ Settlement Act at § 2(b)(5).

Conclusion

Through the Settlement Act, Congress broadly extended the benefits of the IRA, including the land-acquisition provisions contained in Section 5 of the IRA to the Nation. The South Carolina-specific provisions governing the Expanded Reservation and non-Reservation properties do not expressly conflict or limit in any way the generally applicable provisions of the IRA which otherwise authorize the Secretary to accept in trust Catawba lands outside of South Carolina. Accordingly, we conclude that the South Carolina-specific restrictions contained in the Settlement Act do not bar the Nation's pending fee-to-trust application.

25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land

Section 151.10(b) requires the Secretary to consider the tribe's need for additional land.

The Nation's current trust land base of 1,012 acres is subject to development restrictions under the Settlement Act. Additional tribal lands are set aside for cultural and ceremonial purposes, and 56 acres are set aside for agriculture.¹⁸⁵ The Nation prioritizes available trust lands for development for housing, healthcare services, and other public infrastructure and services that benefit tribal members. The Nation's fee lands are limited to 279 acres held as a nature reserve through the Fish and Wildlife Service, and 0.85 acres of undeveloped land slated for sale following the settlement of the Nation's debt with the local school district, as discussed above.¹⁸⁶ The Nation, thus, needs additional land for economic development.

The Acting Regional Director found, and we concur, that the Nation needs additional land.¹⁸⁷

25 C.F.R. § 151.10(c) - The purposes for which the land will be used

Section 151.10(c) requires the Secretary to consider the purposes for which land will be used in evaluating a trust application.

The Nation proposes to construct a casino and mixed-use entertainment complex totaling approximately 195,000 sf. The gaming area will consist of 75,128 sf with approximately 1,796 electronic gaming machines and 54 table games. The main gaming area would include service bars and a player's club. The facility will also include restaurant facilities with 940 seats (café, sports bar, food court, specialty restaurant), and Back of House (kitchen, staff support, exec offices, service corridors, etc.) of 75,000 sf. The facility will include 2,130 parking spaces to accommodate patrons and employees. The casino would be open 24 hours a day, 7 days a week. The casino and multi-use facility will create a total of 2,600 direct employment opportunities.

¹⁸⁵ Nation's Application at 15.

¹⁸⁶ *Id.*

¹⁸⁷ Acting Regional Director's Findings of Fact at 4.

25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls.

By correspondence dated October 31, 2018,¹⁸⁸ the BIA solicited comments from the following state and local governments regarding the potential impact of the proposed trust transfer on regulatory jurisdiction, real property taxes, and special assessments:

- Governor of North Carolina
- Cleveland County Tax Collector
- Cleveland County Board of Commissioners
- Mayor, City of Kings Mountain

The BIA received responses from the Cleveland County Board of Commissioners, Mayor of the City of Kings Mountain, the Cleveland County Tax Collector, and Jay Rhodes, Kings Mountain City Councilman, Ward 5. The Office of the Governor did not respond. The Site is located in the Cleveland County tax jurisdiction. In 2019, the taxes for the Site were \$984.24,¹⁸⁹ which represents 0.0016% of the total value of the Cleveland County taxes.¹⁹⁰

Economic Development

The proposed gaming facility would result in a variety of benefits to the regional economy, including increases in overall economic output and employment opportunities. Construction and operation of the facility would generate substantial temporary and ongoing employment opportunities and wages, which would primarily be filled by the available labor force in Cleveland County.¹⁹¹

An economic impact study prepared by London & Associates concluded that the proposed facility would represent a \$273 million investment in Cleveland County, and, once operational, the facility would generate \$208 million of direct economic activity.¹⁹²

New one-time employment opportunities would be generated during the construction phase of the project, including an estimated 1,640 total jobs. It is expected that a large portion of the employment and payroll will accrue locally with additional secondary impacts when local business establishments and employees make local purchases. Operation of the facility would

¹⁸⁸ Acting Regional Director's Findings of Fact at 4

¹⁸⁹ See letter to Bureau of Indian Affairs, Eastern Regional Office, from G. Scott Neisler, Mayor, City of King Mountain (Nov. 14, 2018).

¹⁹⁰ Acting Regional Director's Findings of Fact at 5.

¹⁹¹ EA § 4.6.1.

¹⁹² See London & Associates, Economic Impact of the Catawba Entertainment Facility on Cleveland County, NC (February 2020).

create approximately 2,600 new direct jobs, with an additional 656 indirect and 323 induced jobs. Total labor income is estimated to exceed \$100 million annually, and the total increase in spending (or value of industry production) in Cleveland County is expected to be \$428 million.¹⁹³

Potential effects on local and state tax revenue resulting from the operation of the facility are expected to be positive because of the construction and operation of the facility. Tax revenue would be generated for state and local governments from activities including secondary economic activity generated by tribal gaming. The facility is projected to generate \$5.5 million per year in state income and sales taxes. At the local level, \$5.1 million per year in local sales, residential, and supporting property taxes will accrue.¹⁹⁴

The gaming facility will be an important economic driver for Cleveland County and the surrounding region. Including indirect and induced effect in the near term (during construction activity), the projected economic effect is estimated to be \$311 million. The annual economic impact on Cleveland County is expected to be \$428 million.¹⁹⁵

The Acting Regional Director found, and we concur, that the removal of the Kings Mountain Site from the tax rolls would be offset by the contributions and economic development provided by the Nation's gaming facility.¹⁹⁶

25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.10(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

The responses to the BIA's requests for comments from state and local officials raised no concerns over jurisdictional issues or potential conflicts of land use.¹⁹⁷

Jurisdiction and Land Use

Land use and planning for the Site is guided by the City of Kings Mountain Zoning Ordinance. The Site is zoned for general business, which is a land use designation that specifically allows for commercial and entertainment uses. Surrounding parcels are also zoned as general business, light industrial and heavy industrial, and residential. The facility's entertainment and mixed commercial uses would be compatible with the City's general business designation.¹⁹⁸

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ London & Associates, Economic Impact Study at 5.

¹⁹⁶ Acting Regional Director's Findings of Fact at 9.

¹⁹⁷ *Id.*

¹⁹⁸ EA § 4.8.1.

Currently, the Site is undeveloped, as are the adjacent lots. Directly across Dixon Boulevard is an abandoned boat repair shop, and southwest of the site, approximately 1,000 feet away, are existing residential parcels along Compact School Road. The facility would not physically disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise significantly conflict with neighboring land uses.¹⁹⁹

Law Enforcement, Fire Protection & Emergency Services

The Nation entered into an Intergovernmental Agreement on December 5, 2019, with Cleveland County, which includes agreed-upon mitigation measures to reduce potential impacts on the local government.²⁰⁰ The Nation has agreed to pay voluntarily development impact fees to Cleveland County and the City of Kings Mountain for the proposed facility. As detailed in the Intergovernmental Agreement, Cleveland County will provide emergency medical, law enforcement, and fire response services to the site.

The Cleveland County Sheriff's Office is located on the south edge of the Site and will provide law enforcement services.²⁰¹ The Nation plans to hire contracted security officers for on-site services. In the future, the Nation plans to provide tribal law enforcement services after establishment of a Tribal Justice Department. At that time, the Nation would enter into a cross-deputization agreement with federal, state, and local law enforcement agencies.²⁰² The County Emergency Management Department, County Volunteer Fire District, and the Kings Mountain Fire Department will provide fire protection and first responder services to the Site.²⁰³ Cleveland County Emergency Medical Services will provide emergency medical services.²⁰⁴ The nearest hospital is 3.8 miles from the Site.²⁰⁵

The Acting Regional Director found, and we concur, that the transfer of the Site into trust would not cause conflicts of land use or other jurisdictional problems.²⁰⁶

25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Section 151.10(g) requires the Secretary to determine whether the BIA has the resources to assume additional responsibilities if the land is acquired in trust.

The Eastern Regional Office of the BIA, located in Nashville, Tennessee, currently provides technical advice and limited direct field services on trust resources program management matters. Acquisition of the Site in trust should not impose significant additional responsibilities

¹⁹⁹ *Id.*

²⁰⁰ EA, Appendix A.

²⁰¹ *Id.* § 4.9.1.

²⁰² Nations Application at 24.

²⁰³ EA § 4.9.1.

²⁰⁴ *Id.* § 4.9.1.

²⁰⁵ *Id.* § 2.3.2.

²⁰⁶ Acting Regional Director's Findings of Fact at 10.

or burdens on the level of services currently being provided to the Nation by the BIA. The Acting Regional Director found, and we concur, that the BIA is able to administer any additional responsibilities that may result from acquisition of the Site in trust.²⁰⁷

25 C.F.R. § 151.10(h) - The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and a determination on the presence of hazardous substances.

602 DM 2, Land Acquisitions: Hazardous Substances Determinations

A Phase I Environmental Site Assessments (ESA) was prepared in March 2013. No current or historical Recognized Environmental Conditions (RECs) were identified on the Site. One REC was identified on an adjacent property that had Underground Storage Tanks (USTs). It is recommended that a minimum of two groundwater samples be collected to confirm no releases from the USTs. Two other RECs in the vicinity of the Site were identified. It is recommended that a minimum of four groundwater samples be collected and tested for petroleum constituents.²⁰⁸ A Phase II ESA was prepared in April 23, 2013, for the Kings Mountain Site. The Phase II ESA analyzed the groundwater samples and found no contaminants of concern.

National Environmental Policy Act

The BIA completed an Environmental Assessment (EA) in March 2020. The EA identifies, analyzes, and documents the potential physical, environmental, cultural, and socioeconomic impacts associated with the transfer of the Site into trust for use as a gaming facility. The BIA made the EA available for state and local governments, resource agencies, and public review on December 22, 2019, for a comment period ending on January 22, 2020. The State of North Carolina received an extension until February 10, 2020, to provide comments. The BIA published Notices of Availability for the EA in the *Charlotte Observer* on December 22, 2019, *Gaston Gazette* on December 28, 2019, and *Shelby Star* on January 3, 2020. The BIA also made the EA available online at *catawbanationclevelandcountyea.com*.

The EA evaluated the following four alternatives:

1. *The Nation's Proposed Project Alternative* - Transfer of approximately 16.57 acres of land into federal trust and the subsequent development of a mixed-use entertainment complex and casino. The proposed mixed-use entertainment complex and casino would include approximately 195,000 sf of building area, including 75,128 sf of gaming area.

²⁰⁷ *Id.* at 11.

²⁰⁸ EA, Appendix H.

2. Reduced Intensity Alternative – This alternative is similar to the Proposed Project Alternative, except that the facility would be reduced in size compared to the Proposed Project Alternative. Under the Reduced Intensity Alternative, the multi-use entertainment complex and casino would include approximately 138,398 sf of building area, including 48,650 sf of gaming area.
3. Non-gaming Alternative - Transfer of approximately 16.57 acres of land into federal trust and the subsequent development of the site into a truck stop.
4. No Action Alternative - Under the No Action Alternative, the Nation would not acquire the property, the BIA would not transfer the site into trust, and no development would occur.

Findings

The BIA evaluated potential direct, indirect, and cumulative impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic and environmental justice conditions, transportation/traffic, land use, public services and utilities, visual resources, and noise.

The EA describes Best Management Practices (BMPs), which the Nation incorporated into the project design to eliminate or substantially reduce environmental consequences to a less-than-significant level.²⁰⁹ The Nation entered into an Intergovernmental Agreement on December 5, 2019, with Cleveland County, which includes agreed-upon mitigation measures to reduce potential impacts on the local government.²¹⁰ The EA analyzes these additional measures in relation to potential environmental impacts. The EA concludes that the project design, implementation of BMPs, and mitigation measures will ensure that impacts to the following resource areas will be less than significant.

Land Resources (EA § 4.1) - Impacts to land resources will be less than significant. The Proposed Project would be developed on a site that was heavily disturbed when the North Carolina Department of Transportation (NCDOT) used the entire site as a soil borrow pit during the construction of Dixon School Road in 2005. The site has no topographic features, such as shallow bedrock, wetlands, or high groundwater conditions that would affect the grading of the site for the Proposed Project. The soils on the site have a minimal erosion susceptibility based on soil type and slope gradients.

Water Resources (EA § 4.2) - Impacts to water resources will be less than significant. The Proposed Project will have no direct impacts to water resources. The Nation shall comply with the National Pollutant Discharge Elimination System General Construction Permit from the U.S. Environmental Protection Agency for construction site runoff during the construction phase as required by the Clean Water Act, 33 U.S.C. § 1251 *et seq.* The Nation shall prepare a

²⁰⁹ EA, Table 2-2.

²¹⁰ EA, Appendix A.

Stormwater Pollution Prevention Plan for the site. There will be no floodplain or wetland impacts from the proposed development.

The City of Kings Mountain Water Department would provide the water supply for the Proposed Project. The City currently has a 12 million gallon per day (MGD) water supply capacity and a current demand of 6.4 MGD, leaving an excess capacity of 5.6 MGD. The water supply comes from the City's John Henry Moss Lake approximately nine miles from the project site. The operational potable water demand of the Proposed Project would not have a significant impact on regional surface water supplies.

Air Quality (EA § 4.3) - Impacts to air quality will be less than significant. The project site is in an attainment zone for the particle pollution standards, and does not require a project-level conformity determination. Because Cleveland County is an attainment or unclassified zone under the National Ambient Air Quality Standards (NAAQS) for all criteria pollutants, the Proposed Project would not result in stationary source emissions (under the categories of Area and Stationary sources) of any one pollutant in excess of the Federal Class I Areas major source threshold of 250 tons per year.

A variety of heavy equipment including trucks, scrapers, excavators, and graders would be used during the construction phase of the Proposed Project; however, these construction activities are short-term in duration and would not impact air quality with the use of appropriate control measures and BMPs. Therefore, implementation of the Proposed Project would not result in significant impacts on air quality in the area.

Biological Resources (EA § 4.4) - Impacts to biological resources will be less than significant. There are no special status species or sensitive ecosystems within the site. Special-status species were defined in the EA to include those species that are listed as endangered or threatened under the Federal Endangered Species Act, formally listed by the state and/or recognized by state agencies, the North Carolina Natural Heritage Program, or other local jurisdictions because of rarity, vulnerability to habitat loss, or population decline. The Proposed Project will also have no impact on migratory birds or birds of prey. The project site is highly disturbed from previous NCDOT activities with minimal trees and vegetation on the site. There is no habitat for foraging, no maternity roost trees, no nesting sites, nor open water on the site.

Cultural Resources (EA § 4.5) - Impacts to cultural resources will be less than significant. The Proposed Project will not affect historic resources, based on the previous NCDOT work on the site. The BIA submitted a request for records review and comments to the North Carolina State Historic Preservation Office. The BIA received the following comments on February 22, 2019, "We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed."²¹¹ These comments were made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 C.F.R. Part 800.

²¹¹ Letter received February 22, 2019, from NC State Historic Preservation Office.

Socioeconomic Conditions (EA § 4.6) - Impacts to socioeconomic conditions will be less than significant. The Intergovernmental Agreement between the Nation and Cleveland County includes agreed-upon mitigation measures to reduce socioeconomic impacts on the local government. The Nation has agreed to pay voluntarily development impact fees to Cleveland County and the City of Kings Mountain for the Proposed Project. The Proposed Project will be an important economic driver for Cleveland County and the surrounding region. Accounting for indirect and induced effect in the near term (during construction activity), the projected economic effect is estimated to be \$311 million. The annual economic impact on Cleveland County is expected to be \$428 million.²¹²

The Nation agreed to mitigation to address compulsive behavior, including problem gambling, in the Intergovernmental Agreement. The Nation will provide to Cleveland County one-time and annual monetary contributions to the County Health Department to combat problem gambling.

Environmental Justice EA (EA § 4.6) - The Proposed Project will have no disproportionately high and adverse impacts to minority and low-income populations. The Proposed Project will include positive impacts to minority populations by improving the local economy and creating jobs.

The Proposed Project would provide important economic and social benefits to the Nation by generating the revenue needed to fund a strong tribal government, improve and build tribal housing, and fund a variety of social, governmental, administrative, educational, health, and welfare services to improve the quality of life for the Nation's members.

Transportation/Traffic (EA § 4.7, Appendix C) - Impacts to transportation/traffic will be less than significant in the local area with planned mitigation measures. A Traffic Impact Analysis prepared by Timmons Group in March 2019 evaluated impacts to local traffic from the Proposed Project and identified improvements to traffic flow. The Traffic Impact Analysis was reviewed and approved by the NCDOT Congestion Management Unit. The Nation shall continue to work collaboratively with NCDOT and local governments to develop appropriate traffic mitigation measures throughout project design and roadway improvement activities. The implementation of the recommended mitigation measures will ensure less than significant impacts to transportation/traffic networks.

Land Use (EA § 4.8.) - Impacts associated with local land use plans will be less than significant. Land use and planning for the project site is currently guided by the City of Kings Mountain Zoning Ordinance. The Proposed Project site is currently undeveloped and zoned as general business that specifically allows for commercial and entertainment uses. The surrounding parcels are also undeveloped and zoned as general business, light and heavy industrial, or residential. The Proposed Project would not physically disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise significantly conflict with neighboring land uses.

Public Services and Utilities (EA § 4.9) - Impacts on public services and utilities will be less than significant. Based on consultation with the local governments and utility providers, there is

²¹² See London & Associates, Economic Impact Study at 5.

sufficient capacity to provide water, wastewater, electricity, gas, and solid waste services to the Proposed Project. Natural gas and wastewater lines will be extended to the site, but the utility infrastructure work will occur within previously disturbed road rights-of-way. As detailed in the Intergovernmental Agreement, Cleveland County will provide emergency medical, law enforcement, and fire response services to the site. The Proposed Project would not result in substantial increases in population or housing; therefore, there would be minimal impacts on school services and recreational activities in the area.

Visual Resources (EA § 4.10) - Impacts to visual resources will be less than significant. The proposed buildings would be consistent with current city zoning requirements, and would not block views of scenic resources in the vicinity of the site. The lighting associated with the Proposed Project would constitute an increase over the existing ambient light levels on the site; however, lighting would be consistent with the designated commercial use of the site. Implementation of BMPs, including shielded and filtered lighting, ensure no significant adverse impacts associated with lighting would occur.

Noise (EA § 4.11, Appendix G) - Impacts from noise will be less than significant. The closest nearby noise-sensitive land uses are rural residential homes located west of the site over 1,000 feet away. Existing noise measurements were taken at these residences. The existing noise levels range from 56 dBA to 72 dBA. The predicted sound level from construction equipment is approximately 62 dBA. Construction noise BMPs would further reduce noise during construction activities and would limit construction to daytime hours to reduce the potential for sleep disturbance. Because of the distance of sensitive noise receptors to the site, the short-term and temporary nature of construction noise, and implementation of mitigation, and BMPs to reduce construction noise levels to the extent feasible, there would not be a significant adverse impact due to construction noise. Operational noise from the Proposed Project and increased traffic noise were also evaluated and determined to be less than significant.

Hazardous Materials (EA § 4.12) - Incidents associated with hazardous materials that would be most likely to occur during construction include the incidental release of fuels, oil and grease during the operation of construction equipment, as well as accidental releases associated with handling and transferring hazardous material-containing substances. Implementation of BMPs during construction will limit the release of hazardous materials. A Phase I Environmental Site Assessment conducted in accordance with ASTM 1527-13, determined that there are no Recognized Environmental Conditions or contamination concerns with the site.

Cumulative/Indirect Impacts (EA § 4.13) - Cumulative and Indirect impacts from the Proposed Project on all environmental areas discussed above would be less than significant.

Mitigation (EA § 5.0) – Mitigation measures to be implemented during construction and operation of the Proposed Project Alternative are summarized in Table 5-1. All mitigation is enforceable because it is inherent to the project design and required through provisions of the Intergovernmental Agreement, and federal or state statute, where applicable.

Conclusion

Among the project alternatives considered, the Proposed Project Alternative would best meet the purpose and need for Proposed Action of transferring the Site into trust because it would provide the greatest socioeconomic benefit to the Nation. All environmental effects of the Proposed Project Alternative can be reduced to less-than-significant levels with mitigation.

25 C.F.R. § 151.11(b) -The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

The Site is located approximately 33 miles from the Nation's existing reservation, and is within the Nation's congressionally mandated Service Area. The Site is approximately one mile from the North Carolina-South Carolina border.²¹³

Due to the close proximity of the Site to the Nation's trust land and the state border, the Department need not greatly securitize the Nation's justifications of anticipated benefits from the proposed transfer of the Site into trust. Moreover, neither the State nor the local governments having regulatory jurisdiction over the Site raised any regulatory concerns.

25 C.F.R. § 151.11(c) -Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use

The Nation provided a Business Plan which analyzed the intended use of the Site for tribal and economic development purposes.²¹⁴ The Nation anticipates that the Entertainment Complex will generate a net income of \$72 million in the first year of operation and \$150 million in year five.²¹⁵

Additional tribal revenue is expected from the sale of Native artwork and handcrafts at the on-site gift shop.²¹⁶ The gift shop will feature the work of Catawba artisans and craftspeople, as well as other Native goods and products. Establishing this cultural outlet is of great significance to the Nation. Many Catawba artisans are dedicated to their craft yet struggle to support themselves financially on their craft alone. Given the vital importance of the Catawba pottery tradition to the expression of Catawba identity, the Nation wishes to support its traditional craftspeople. The on-site gift shop will enable the Nation to provide its members with a commercial outlet to help preserve and share the Catawba's' unique artistic and cultural heritage.²¹⁷

²¹³ Acting Regional Director's Findings of Fact at 12.

²¹⁴ See Business Plan to Accompany the Application of the Catawba Indian Nation to Acquire 16.57 acres +/- of Off-Reservation Trust Land in Kings Mountain, North Carolina, Pursuant to 25 U.S.C. § 5108 and 25 C.F.R. Part 151 (Sept. 17, 2018) (hereinafter Business Plan).

²¹⁵ Business Plan at 3.

²¹⁶ Acting Regional Director's Findings of Fact at 13.

²¹⁷ *Id.*

The Acting Regional Director found, and we concur, that the construction, maintenance, and operation of the gaming and entertainment facility will provide a major economic benefit to the Nation.²¹⁸

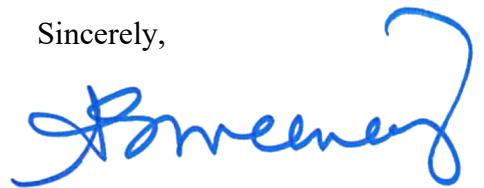
25 C.F.R. § 151.11(d) - Contact with state and local governments pursuant to sections 151.10(e) and (f)

See Sections 151.10(e) and (f) above.

Decision to approve the tribe's fee-to-trust application

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will transfer the King Mountain Site into trust for the Catawba Indian Nation. Further, once transferred into trust, the Nation may conduct gaming on the King Mountain Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719 (b)(1)(A)(B)(iii). Consistent with applicable law, upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Acting Regional Director shall immediately acquire the land in trust. This decision constitutes a final agency action under 5 U.S.C. § 704.

Sincerely,



Tara Sweeney
Assistant Secretary – Indian Affairs

Enclosure

²¹⁸ Acting Regional Director's Findings of Fact at 13.

Enclosure

Legal Description of Property

Kings Mountain Parcel, 16.57 acres, more or less, in the name of the United States of America in Trust for Catawba Indian Nation upon fulfillment of all Departmental requirements. The 16.57 acres, more or less, are described as follows:

BEGINNING on a concrete right of way monument having NAD83 NC State Plane Grid Coordinates N: 536550.60 USFT and E: 1292093.25 USFT and being located N 11° 18' 59" W 637.68' (Horizontal Ground Distance) from NCGS "Dixon" having NAD83 NC State Plane Grid Coordinates N: 535925.42 USFT and E: 1292218.36 USFT; running thence S 35° 20' 37" W 83.44' to a concrete right of way monument; thence along an arc of curve to the left having a radius of 906.51', an arc length of 357.87', a chord bearing S 68° 52' 34" W and a chord length of 355.55' to a 5/8" Rebar Set; thence S 57° 19' 29" W 498.70' to a 5/8" Rebar Set; thence along an arc of curve to the right having a radius of 1344.39', an arc length of 113.61', a chord bearing S 59° 44' 45" W and a chord length of 113.58' to a 5/8" Rebar Set; thence a new line N 23° 34' 25" W 751.26' to a 5/8" Rebar Set; thence a new line N 66° 25' 35" E 1026.64' to a 5/8" Rebar Set in the Western Right of Way Line of State Project 8.2800802; thence with the western right of way line N 66° 25' 35" E 43.71' to a 5/8" Rebar Set; thence S 23° 18' 33" E 151.15' to a 1/2" Rebar Found; thence S 23° 18' 33" E 93.85' to a 5/8" Rebar Set; thence S 67° 29' 04" W 19.83' to a 5/8" Rebar Set; thence S 23° 18' 56" E 237.04' to a 5/8" Rebar Set; thence S 17° 18' 46" E 150.51' to the point and place of beginning and containing 16.573 Acres +/- and shown as Lot 1 according to a survey by TGS Engineers Dated September 17, 2018.